IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

CRL.A.No. 44 of 2001

THE JUDGMENT DT. 12/10/00 IN CC NO. 287/98 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I

APPELLANT/COMPLAINANT:

T.M. MADHAVAN PILLAI,
S/O. K. MADHAVAN NAIR,
CHIRAKKARAVILAKATHU PUTHEN VEEDU,
MANNAMMOOLA, PEROORKADA,
THIRUVAANANTHAPURAM.

BY ADV. SRI.L.MOHANAN
SRI.D.SAJEEV

RESPONDENTS/ACCUSED:
----

1. **SUKUMARAN NAIR,**
S/O, MADHAVAN NAIR,
SREE SAI, T.C. NO. 10/714,
MANNAMMOOLA, PEROORKADA,
THIRUVAANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO. 44 OF 2001

DATED THIS THE 26TH OCTOBER 2007

JUDGMENT

The appellant is the complaint in C.C.No.287/1998 in the file of the Judicial First Class Magistrate-I, Thiruvananthapuram with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted. It is the case of the complainant that on 15-3-1997 the accused borrowed a sum of Rs.50,000/- from the complainant and issued impugned cheque dated 15-7-1997 for Rs.50,000/-. As the amount was not paid on demand, the complainant along with his friend went to the residence of the accused and demanded the amount. The accused requested two more months time and also corrected the date of the cheque as 15-9-1997 and attested the correction. Subsequently, as per the direction of the accused, the complainant presented the cheque on 27-2-1998, but the same was returned as dishonoured for want of funds in the account of the accused. Lawyer notice sent was not received and returned unclaimed.

2. The evidence adduced in the matter consisted of the testimony of Pw.1 and Exts.P1 to P6 and DW.1.

3. I find that PW1 has testified as to the payment of the amount, execution of the cheque and also the circumstances that lead to correction of the date of the cheque on 15-9-1997 and attestation of the same by putting full signature by the accused. It is the case of the defence as set up by DW1,the accused, that he had borrowed Rs.15,000/-in March 1997 and repaid the amount by way of three cheques of Rs.5,000/- each and he had delivered a blank signed cheque as security. After repayment of the amount, the cheque was not returned as there was a dispute regarding the interest. The trial court found that the case set up by the accused that he borrowed Rs.15,000/- and repaid by way of three cheques stands not established as no objective evidence in this regard is produced. It was also found that the evidence of Pw1 appeared trustworthy as nothing has been brought out in the cross examination to discredit the version. The contention is that there is material alteration in correcting the date of the cheque was also rejected as the full signature of the accused is seen put at the place of correction. But the accused happened to be acquitted already on the ground that the complainant demanded the cheque amount instead of presenting the cheque. According to the court below, had the cheque been

issued towards discharge of the liability, the complainant would have presented the cheque for encashment instead of going to the accused and asking for the money, I find that the reasoning appears to be rather absured. I find that the complainant/appellant has established beyond reasonable doubt that the respondent/accused is guilt of the offence alleged and hence he is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.50,000/- to the complainant/appellant and in default to undergo simple imprisonment for three months. He shall appear before the Judicial First Class Magistrate-I, Thiruvananthapuram on 30--11-2007 to receive sentence. The appeal is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.A. NO. 44 OF 2001

JUDGMENT

26-10-2007